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May 22, 2001

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**BY COURIER**

Ms. Dorothy Attwood  
Chief, Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Joint Petition of BellSouth, SBC and Verizon for Elimination  
of Mandatory Unbundling of High-Capacity Loops and Dedicated  
Transport, CC Docket No. 96-98*

Dear Ms. Attwood:

The Joint Petition filed by BellSouth, SBC and Verizon (hereinafter the "Bells") seeking to eliminate the Commission's requirement that ILECs unbundle hi-capacity loops and dedicated transport, directly contravenes both the letter and the spirit of the Commission's decision in the *UNE Remand Order* to review its national UNE list every *three years*.<sup>1</sup> If entertained at this juncture, this untimely and procedurally defective petition would needlessly divert competitive carriers' scarce resources from the difficult task of successfully implementing competitive carrier business plans and could seriously undermine the confidence of the investment community in the CLEC sector. Accordingly, KMC Telecom, NuVox, Cbeyond, Net2000, Intermedia, e.spire, XO Communications, Focal and ALTS (the "Signatories") jointly submit this letter in support of the "Motion to Dismiss Joint Petition" filed by NewSouth on April 25, 2001 in the above-captioned proceeding and urge the Commission to grant the motion expeditiously.

Apart from the dubious merits of the arguments presented by the Bells in their Joint Petition, grant of the Motion to Dismiss is warranted because the Joint Petition seeks to make changes to the national UNE list prior to the end of the three-year "quiet period" established by

<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), ¶¶ 149-151.

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the Commission in its recent *UNE Remand Order*. The Bells' attempt to subvert this sensible and necessary market-stabilizing decision flies in the face of the Commission's clear admonishment that such *ad hoc* petitions would be unduly disruptive to the marketplace and to the administration of the regulatory regime.<sup>2</sup> Accordingly, the Joint Petition should not be entertained, for the reasons most eloquently stated by the Commission itself in the *UNE Remand Order*.

The Signatories also concur with NewSouth's argument that the Joint Petition is procedurally defective in that it seeks to make changes to substantive rules duly promulgated by the Commission (*viz.*, rules 319(a)(1) (Loops) and 319(d)(1)(a) (Dedicated Transport)) without observing the legally required steps. Specifically, through their Joint Petition, the Bells attempt to subvert the process of notice and comment rulemaking. They should not be indulged. At the very least (and only in the event the Commission does not expeditiously grant the Motion to Dismiss), the Commission should issue a notice stating that the Joint Petition will be treated as a Petition for Rulemaking and that upon review of the comments and replies thereon, the Commission will determine whether or not to issue a notice of proposed rulemaking or to defer the issue to its three year review process.

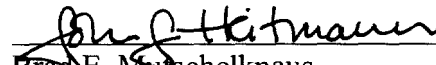
Finally, the Commission should dismiss the Bells' Joint Petition as an improper collateral attack on the Commission's *UNE Remand Order* itself, as well as on the Commission's ongoing proceeding in the same docket regarding the use of UNEs to provide exchange access service. With respect to the former, the Bells' disagreement with the Commission's 3-year review cycle logically should be taken up in a reconsideration or appeal of the *UNE Remand Order*, and may not properly be "brought in through the back door" in the context of a spontaneous motion claiming that market conditions somehow have materially changed over the course of little more than a year (and despite the Bells' intransigence with respect to complying with many of the rules adopted by the Commission therein). With respect to the latter, the Bells should not be permitted to end-run the Commission's ongoing review of the Bells' subversion of FCC rules requiring access to UNE combinations in one proceeding by seeking in another proceeding to eliminate the requirement to provide access to the individual UNEs that comprise such combinations. The attention of all concerned would be better dedicated to compliance and enforcement.

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<sup>2</sup> *Id.*, ¶ 150 ("Entertaining, on an *ad hoc* basis, numerous petitions to remove elements from the list, either generally or in particular circumstances, would threaten the certainty that we believe is necessary to bring rapid competition to the greatest number of consumers. In addition, entertaining numerous petitions on an *ad hoc* basis would undermine the goal of implementing unbundling rules that are administratively practical to apply.").

The appropriate remedy for the flaws in the Joint Petition is clear enough: dismissal without consideration on the merits. The Signatories urge that such dismissal be granted as soon as possible, since prolongation of this proceeding only will result in the fruitless expenditure of unnecessary resources by them, the Commission, the petitioners, and all other interested parties. In fact, the very maintenance of this proceeding in the Commission's docket is a palpable threat to the competitive marketplace that should be removed as promptly as possible.

Respectfully submitted,



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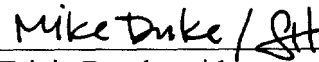
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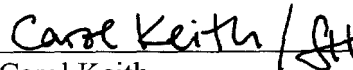
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